

Environmental Protection Agency

§ 124.1

- 124.20 Computation of time.
- 124.21 Effective date of part 124.

Subpart B—Specific Procedures Applicable to RCRA Permits

- 124.31 Pre-application public meeting and notice.
- 124.32 Public notice requirements at the application stage.
- 124.33 Information repository.

Subpart C—Specific Procedures Applicable to PSD Permits

- 124.41 Definitions applicable to PSD permits.
- 124.42 Additional procedures for PSD permits affecting Class I areas.

Subpart D—Specific Procedures Applicable to NPDES Permits

- 124.51 Purpose and scope.
- 124.52 Permits required on a case-by-case basis.
- 124.53 State certification.
- 124.54 Special provisions for State certification and concurrence on applications for section 301(h) variances.
- 124.55 Effect of State certification.
- 124.56 Fact sheets.
- 124.57 Public notice.
- 124.58 [Reserved]
- 124.59 Conditions requested by the Corps of Engineers and other government agencies.
- 124.60 Issuance and effective date and stays of NPDES permits.
- 124.61 Final environmental impact statement.
- 124.62 Decision on variances.
- 124.63 Procedures for variances when EPA is the permitting authority.
- 124.64 Appeals of variances.
- 124.65 [Reserved]
- 124.66 Special procedures for decisions on thermal variances under section 316(a).

Subpart E—Evidentiary Hearing for EPA-Issued NPDES Permits and EPA-Terminated RCRA Permits

- 124.71 Applicability.
- 124.72 Definitions.
- 124.73 Filing and submission of documents.
- 124.74 Requests for evidentiary hearing.
- 124.75 Decision on request for a hearing.
- 124.76 Obligation to submit evidence and raise issues before a final permit is issued.
- 124.77 Notice of hearing.
- 124.78 *Ex parte* communications.
- 124.79 Additional parties and issues.
- 124.80 Filing and service.
- 124.81 Assignment of Administrative Law Judge.

- 124.82 Consolidation and severance.
- 124.83 Prehearing conferences.
- 124.84 Summary determination.
- 124.85 Hearing procedure.
- 124.86 Motions.
- 124.87 Record of hearings.
- 124.88 Proposed findings of fact and conclusions; brief.
- 124.89 Decisions.
- 124.90 Interlocutory appeal.
- 124.91 Appeal to the Administrator.

Subpart F—Non-Adversary Panel Procedures

- 124.111 Applicability.
- 124.112 Relation to other subparts.
- 124.113 Public notice of draft permits and public comment period.
- 124.114 Request for hearing.
- 124.115 Effect of denial of or absence of request for hearing.
- 124.116 Notice of hearing.
- 124.117 Request to participate in hearing.
- 124.118 Submission of written comments on draft permit.
- 124.119 Presiding Officer.
- 124.120 Panel hearing.
- 124.121 Opportunity for cross-examination.
- 124.122 Record for final permit.
- 124.123 Filing of brief, proposed findings of fact and conclusions of law and proposed modified permit.
- 124.124 Recommended decision.
- 124.125 Appeal from or review of recommended decision.
- 124.126 Final decision.
- 124.127 Final decision if there is no review.
- 124.128 Delegation of authority; time limitations.

APPENDIX A TO PART 124—GUIDE TO DECISION-MAKING UNDER PART 124

AUTHORITY: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S.C. 7401 *et seq.*

SOURCE: 48 FR 14264, Apr. 1, 1983, unless otherwise noted.

Subpart A—General Program Requirements

§ 124.1 Purpose and scope.

(a) This part contains EPA procedures for issuing, modifying, revoking and reissuing, or terminating all RCRA, UIC, PSD and NPDES “permits” (including “sludge-only” permits issued pursuant to § 122.1(b)(3)), other than RCRA and UIC “emergency permits” (see §§ 270.61 and 144.34) and RCRA “permits by rule” (§ 270.60). The

latter kinds of permits are governed by part 270. RCRA interim status and UIC authorization by rule are not “permits” and are covered by specific provisions in parts 144, subpart C, and 270. This part also does not apply to permits issued, modified, revoked and re-issued or terminated by the Corps of Engineers. Those procedures are specified in 33 CFR parts 320–327. The procedures of this part also apply to denial of a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29.

(b) Part 124 is organized into six subparts. Subpart A contains general procedural requirements applicable to all permit programs covered by these regulations. Subparts B through F supplement these general provisions with requirements that apply to only one or more of the programs. Subpart A describes the steps EPA will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits. Subpart A also covers assembling an ad-

ministrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of the final permit decision. Subpart B is reserved for specific procedural requirements for RCRA permits. There are none of these at present but they may be added in the future. Subpart C contains definitions and specific procedural requirements for PSD permits. Subpart D applies to NPDES permits until an evidentiary hearing begins, when subpart E procedures take over for EPA-issued NPDES permits and EPA-terminated RCRA permits. Subpart F, which is based on the “initial licensing” provisions of the Administrative Procedure Act (APA), can be used instead of subparts A through E in appropriate cases.

(c) Part 124 offers an opportunity for three kinds of hearings: A public hearing under subpart A, an evidentiary hearing under subpart E, and a panel hearing under subpart F. This chart describes when these hearings are available for each of the five permit programs.

HEARINGS AVAILABLE UNDER THIS PART

Programs	Subpart		
	(A)	(E)	(F)
	Public hearing	Evidentiary hearing	Panel hearing
RCRA	On draft permit, at Director's discretion or on request (§ 124.12).	(1) Permit termination (RCRA section 3008). (2) With NPDES evidentiary hearing (§ 124.74(b)(2)).	(1) At RA's discretion in lieu of public hearing (§§ 124.12 and 124.111(a)(3)). (2) When consolidated with NPDES draft permit processed under Subpart F (§ 124.111(a)(1)(i)).
UIC	On draft permit, at Director's discretion or on request (§ 124.12).	With NPDES evidentiary hearing (§ 124.74(b)(2)).	(1) At RA's discretion in lieu of public hearing (§§ 124.12 and 124.111(a)(3)). (2) When consolidated with NPDES draft permit processed under Subpart F (§ 124.111(a)(1)(i)).
PSD	On draft permit, at Director's discretion or on request (§ 124.12).	Not available (§ 124.71(c))	When consolidated with NPDES draft permit processed under Subpart F if RA determines that CAA one year deadline will not be violated.
NPDES (other than general permit).	On draft permit, at Director's discretion or on request (§ 124.12).	(1) On request to challenge any permit condition or variance (§ 124.74). (2) At RA's discretion for any 301(h) request (§ 124.64(b)).	(1) At RA's discretion when first decision on permit or variance request (§ 124.111). (2) At RA's discretion when request for evidentiary hearing is granted under § 124.75(a)(2) (§§ 124.74(c)(8) and 124.111(a)(2)). (3) At RA's discretion for any 301(h) request (§ 124.64(b)).
NPDES (general permit).	On draft permit, at Director's discretion or on request (§ 124.12).	Not available (§ 124.71(a))	At RA's discretion in lieu of public hearing (§ 124.111(a)(3)).

HEARINGS AVAILABLE UNDER THIS PART—Continued

Programs	Subpart		
	(A)	(E)	(F)
	Public hearing	Evidentiary hearing	Panel hearing
404	On draft permit or on application when no draft permit, at Director's discretion or on request (§ 124.12).	Not available (§ 124.71)	Not available (§ 124.111).

(d) This part is designed to allow permits for a given facility under two or more of the listed programs to be processed separately or together at the choice of the Regional Administrator. This allows EPA to combine the processing of permits only when appropriate, and not necessarily in all cases. The Regional Administrator may consolidate permit processing when the permit applications are submitted, when draft permits are prepared, or when final permit decisions are issued. This part also allows consolidated permits to be subject to a single public hearing under § 124.12, a single evidentiary hearing under § 124.75, or a single non-adversary panel hearing under § 124.120. Permit applicants may recommend whether or not their applications should be consolidated in any given case.

(e) Certain procedural requirements set forth in part 124 must be adopted by States in order to gain EPA approval to operate RCRA, UIC, NPDES, and 404 permit programs. These requirements are listed in §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA) and signaled by the following words at the end of the appropriate part 124 section or paragraph heading: (*applicable to State programs see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)*). Part 124 does not apply to PSD permits issued by an approved State.

(f) To coordinate decisionmaking when different permits will be issued by EPA and approved State programs, this part allows applications to be jointly processed, joint comment periods and hearings to be held, and final permits to be issued on a cooperative basis whenever EPA and a State agree to take such steps in general or in individual cases. These joint processing agreements may be provided in the

Memorandum of Agreement developed under §§ 123.24 (NPDES), 145.24 (UIC), 233.24 (404), and 271.8 (RCRA).

[48 FR 14264, Apr. 1, 1983, as amended at 54 FR 9607, Mar. 7, 1989; 54 FR 18785, May 2, 1989]

§ 124.2 Definitions.

(a) In addition to the definitions given in §§ 122.2 and 123.2 (NPDES), 501.2 (sludge management), 144.3 and 145.2 (UIC), 233.3 (404), and 270.2 and 271.2 (RCRA), the definitions below apply to this part, except for PSD permits which are governed by the definitions in § 124.41. Terms not defined in this section have the meaning given by the appropriate Act.

Administrator means the Administrator of the U.S. Environmental Protection Agency, or an authorized representative.

Applicable standards and limitations means all State, interstate, and federal standards and limitations to which a "discharge," a "sludge use or disposal practice" or a related activity is subject under the CWA, including "standards for sewage sludge use or disposal," "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in "approved States," including any approved modifications or revisions. For RCRA, application also includes the information required by the Director under §§ 270.14 through 270.29 [contents of Part B of the RCRA application].